

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of	§	
	§	
Numbering Resource Optimization	§	CC Docket No. 99-200
	§	
Telephone Number Portability	§	CC Docket No. 95-116
	§	

**REPLY COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

The Public Utility Commission of Texas (PUCT) respectfully submits these reply comments pursuant to the Federal Communications Commission's (FCC) March 24, 2003 Public Notice¹ regarding the petition of Western Wireless Corporation (WWC) for waiver of the FCC's thousands-block number pooling (pooling) requirements. All carriers capable of providing local number portability (LNP) must participate in pooling where it is implemented, consistent with the FCC's national pooling framework.² The FCC provided that LNP and pooling should initially occur in the largest 100 Metropolitan Statistical Areas³ (MSAs).⁴

I. Introduction

In its supplemental petition, WWC requested clarification that pooling requirements do not apply in Rural Service Areas (RSAs) even if the RSAs include areas in the top 100 MSAs as

¹ *The Commission Seeks Comment on the Petition of Western Wireless for Waiver of the Commission's Number Pooling Requirements*, CC Docket 99-200, CC Docket 95-116, Public Notice, DA 03-860 (rel. Mar. 24, 2003) (Public Notice).

² 47 C.F.R. § 52.20(b).

³ MSAs consist of one or more counties, except in New England, where MSAs consist of cities and towns rather than whole counties.

⁴ 47 C.F.R. § 52.31(a).; *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104, para. 158 (rel. Apr. 24, 2002) (First Report and Order).

defined for numbering purposes. WWC claimed that because the FCC defined RSAs as outside of MSAs for licensing purposes, and because WWC holds a license to serve an RSA, WWC should not have to pool in RSA areas in the top 100 MSAs for numbering purposes. Two cellular carriers submitted comments supporting WWC's position. The PUCT disagrees with these comments and instead believes that the FCC should not exclude areas in RSAs from MSAs for numbering purposes.

II. Discussion

A. 100 Largest MSAs

The FCC clarified that the largest 100 MSAs include all areas previously or currently specified by the Office of Management and Budget (OMB). The FCC has already stated that "LNP is required in the top 100 MSAs identified in the 1990 U.S. Census reports and all subsequent updates; areas on the original list but no longer on the current list are still subject to LNP requirements."⁵ The FCC's language indicates that LNP requirements apply in all areas currently or formerly a part of a top 100 MSA. The language makes no exception for RSAs. The fact that an MSA for numbering includes an area in an RSA for licensing does not alter the FCC's requirement of implementing LNP and pooling throughout the largest 100 MSAs for numbering purposes.

⁵ *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, FCC 01-362, para. 127 (rel. Dec. 28, 2001) (NRO Third Report and Order).

B. RSAs Should Not Affect MSAs for Numbering Purposes

1. RSAs/MSAs for Licensing and MSAs for Numbering Have Unrelated Functions

RSAs and MSAs for licensing and MSAs for numbering have different functions. For licensing, RSAs and MSAs define the areas covered by cellular licenses. For numbering, MSAs (specifically the largest 100 MSAs) define the areas where carriers have LNP and pooling obligations.

Under the FCC's rules, "[c]ellular markets are standard geographic areas used by the FCC for administrative convenience in the licensing of cellular systems. Cellular markets comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs)."⁶ For licensing purposes, the FCC defined MSAs/RSAs in 1992.⁷ Also for licensing purposes, the FCC's rules defined RSAs as areas other than MSAs.⁸

However, for purposes of defining LNP and pooling obligations, the FCC used the largest 100 MSAs identified in the 1990 U.S. Census reports and all subsequent updates. The FCC specifically incorporated updates into the largest 100 MSAs to account for population growth. In contrast, MSAs for licensing remain fixed. In the NRO Third Report and Order, the FCC stated that "[r]ather than limit deployment to a list that is not reflective of the current and ever-changing population and competitive landscape, we conclude that new entrants on the top 100 MSA list should be included."⁹ Excluding RSAs from MSAs for numbering purposes would disregard population growth in the counties comprising the RSAs.

⁶ 47 C.F.R. § 22.909.

⁷ Public Notice Report No. CL-92-40, Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties, dated January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992).

⁸ 47 C.F.R. § 22.909.

⁹ *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, FCC 01-362, para. 127 (rel. Dec. 28, 2001) (NRO Third Report and Order).

2. Excluding RSAs from MSAs Discriminates between Carriers

If the FCC excluded RSAs from MSAs for numbering, holders of licenses defined by RSA would not have any LNP or pooling obligations in the largest 100 MSAs. However other carriers, such as Personal Communications Service (PCS) licensees (serving areas defined by Major Trading Area [MTA] and Basic Trading Area [BTA]) and wireline carriers (serving areas defined by exchange) would still have LNP and pooling obligations in the top 100 MSAs, even when these carriers serve the same areas as cellular carriers serving RSAs. Currently, the FCC applies LNP and pooling obligations to carriers in the largest 100 MSAs regardless of their licensed/certificated area. However, excluding RSAs from MSAs would only serve to discriminate against carriers that have service areas not defined by RSA. In the NRO Third Report and Order, the FCC found that “it would be discriminatory to allow new entrants into markets in which all carriers are LNP capable to enter these markets as competitors without being subject to the same requirements.”¹⁰ Similarly, it would be discriminatory to allow rural-cellular carriers to avoid LNP and pooling obligations while other carriers must comply with LNP and pooling obligations in the same area.

III. Conclusion

The fact that some carriers have service areas defined by RSA should not diminish the applicability of LNP and pooling. The definition of RSAs and MSAs for licensing provides no substantive basis for excluding RSAs from MSAs for numbering. Furthermore, excluding RSAs would discriminate against carriers that do not hold licenses with RSA-defined service areas.

Accordingly, the PUCT urges the FCC to apply LNP and pooling requirements throughout the 100 largest MSAs, regardless of whether an MSA encompasses any part of an RSA.

Respectfully submitted,

Public Utility Commission of Texas
1701 North Congress Avenue
Post Office Box 13326
Austin, Texas 78711-3326

May _____, 2003

/original signed/

REBECCA KLEIN
Chairman

/original signed/

BRETT A. PERLMAN
Commissioner

/original signed/

JULIE PARSLEY
Commissioner

¹⁰ Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200*, FCC 01-362, para. 127 (rel. Dec. 28, 2001) (NRO Third Report and Order).